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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:

University of the District of
Columbia,

Petitioner,

and

American Federation of State,
County and Municipal Employees,
Local 2087,

Respondent.

PERB Case No. 96-A-06
Opinion No. 473

DECISION AND ORDER

On April 9, 1996, Petitioner University of the District of Columbia (UDC), filed an Arbitration Review Request seeking review of two arbitration awards. The first Award, issued July 27, 1995, sustained a grievance filed by the American Federation of State, County and Municipal Employees, Local 2087 (AFSCME) on behalf of bargaining unit employees that were separated from their employment pursuant to a reduction in force (RIF). In that arbitral proceeding, the parties authorized the Arbitrator to "retain jurisdiction so the parties could attempt to mutually resolve the remedy consistent with [the] Opinion and Award." (Supp. Award at 1.) Following the parties' failed attempt to reach an agreement, the Arbitrator issued a second Award on the remedy on March 13, 1996. By letter dated April 22, 1996, the Board's Executive Director dismissed UDC's Arbitration Review Request on the basis of timeliness.^{1/}

On April 24, 1996, UDC filed a document styled "Request for Review of Administrative Dismissal". AFSCME filed a Response on April 30, 1996. Attached to UDC's document was the cover letter from the American Arbitration Association to the parties indicating that service of the second Award was made on March 15, 1996. Based

^{1/} Board Rule 538.1 requires that arbitration review requests be filed not later than 20 days after service of the award and be accompanied by proof of the date of service. The only proof of service accompanying UDC's Request was the date of issuance of the two Awards, i.e., July 27, 1995, and March 13, 1996, respectively. Even if 5 days are added (for service by mail) to the issuance date of the most recent Award, Board Rule 538.1 and 501.1 mandates that the Request be filed no later than April 8, 1996.

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upon this proof of service, the Executive Director rescinded his administrative dismissal and referred the Arbitration Review Request, including any remaining issues of timeliness, and AFSCME's Opposition to Arbitration Review Request and UDC's Reply to Opposition to the Board for disposition.

Under the Comprehensive Merit Personnel Act, D.C. Code Sec. 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy... ." However, before we address the merits of UDC's request, a threshold jurisdictional issue remains concerning the timeliness of UDC's Request with respect to the first Award issued on July 27, 1995. Resolution of this issue requires that we review the basis of UDC's appeal of the Awards.

UDC's Arbitration Review Request is based on two grounds: the Arbitrator decided a grievance, i.e., RIFs, that (1) is not within the scope of matters subject to arbitration in accordance with the parties' collective bargaining agreement and 2) violates the CMPA's policy favoring the "expeditious adjustment of grievances and complaints" and "efficient administration of this personnel system" by removing from management the resolution of the disputed RIF claim. (ARR at 6 and 14.)^{2/}

These grounds for review address issues underlying the Arbitrator's decision to sustain the matters presented for arbitration in the first Award. While UDC's Request meets the time period required under Board Rule 538.1 for a review of the March 13 remedial Award, UDC does not appeal the limited issues determined in that Award. Its request for review of matters determined in the first Award is therefore untimely.^{3/}

^{2/} UDC contends that these grounds for review establish that the Arbitrator was without, or exceeded, his authority and that the Award is contrary to law and public policy, respectively.

^{3/} UDC argued that the July 27, 1995 Award was not final for purposes of our review until the issuance of the second March 13, 1996 Award concerning the remedy. UDC's reliance upon our decision in University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 845, PERB Case No. 90-A-05 (1991), in support of its contention, however, is misplaced. In that case we ruled that the CMPA does not give the Board authority to consider an appeal of an arbitration award in the absence of a final award. We found the award in that case was not final for purposes of our review since the arbitrator had agreed to reopen his award to "clarify" issues that had been

In bifurcated arbitral proceedings, as we have here, that result in two awards that address distinct issues in a single dispute, we have ruled that the timeliness of an appeal of such awards is measured from the service of the award containing the issues being appealed. See, District of Columbia Public Schools and American Federation of State County and Municipal Employees, D.C. Council 20, Local 1959, Slip Op. No. 381 at n. 4, PERB Case No. 94-A-02 (1994). The Board has previously considered individual appeals by UDC of two separate awards that resulted from the bifurcation of issues in a single arbitration proceeding. See, University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 36 DCR 3635, Slip Op. 220, PERB Case No. 88-A-03 (1989) and University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 41 DCR 2738, Slip Op. 317 at n. 1, PERB Case No. 92-A-02 (1992). When an arbitrator is accorded the authority to retain jurisdiction after an award is made, conditional or otherwise, to decide issues not previously arbitrated, the arbitrator is without authority to make determinations on issues that have already been determined in or restricted to the prior arbitral proceeding. University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 41 DCR 3830, Slip Op. 321, PERB Case No. 92-A-05 (1994).^{4/} Therefore, for purposes of our review, each award is final when rendered with respect to the issues decided therein.

Upon our review of UDC's Arbitration Review Request, we find that the grounds for review constitute an appeal of the issues decided in the first arbitration resulting in the July 17, 1995 Award. The Arbitrator did not retain authority to revisit the

decided therein.

The instant Awards do not present the factors critical to that ruling. In PERB Case 90-A-05 the arbitrator retained jurisdiction to revisit the same issues decided in the initial proceeding. In the instant arbitral proceedings, the Arbitrator retained limited jurisdiction accorded him by the parties to initiate a second or supplemental proceeding to address an issue, i.e., the remedy, not determined in the first Award. The limited jurisdiction retained by the Arbitrator to award a remedy did not authorize him to revisit issues determined in the first Award.

^{4/} The D.C. Superior Court affirmed the Board's ruling on this issue in a Memorandum Opinion and Order. University of the District of Columbia Faculty Association/NEA v. Public Employee Relations Board, Civil Action No. 92-MPA-24 (September 9, 1993).